

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Mark R. Schroeder

Serial No.: 09/819,040

Filed: August 23, 2001

For: Assembly For Dispensing Packaged
Adhesive-Sided Articles

Atty. Docket No.: 006366.00080

Group Art Unit: 1771

Examiner: K. Lewis

PETITION TO WITHDRAW AN ERRONEOUS NOTICE OF ABANDONMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Commissioner is hereby petitioned under 37 C.F.R. § 1.181 for withdrawal of an erroneous holding of abandonment of the application referenced above. We believe no fee is due in connection with this petition. If a fee is due, please charge Deposit Account No. 19-0733.

In the facts set forth below, it is clear that the U.S. Patent and Trademark Office (USPTO) mailed an Office Action for the above-identified patent application to an incorrect correspondence address. The USPTO also, after learning of their original mailing error, mailed a Notice of Abandonment relating to the above-identified application to the same wrong correspondence address. These acts of the USPTO have required the filing of this Petition.

Statement of the Facts

1. On October 10, 2001, the undersigned attorney filed a Revocation and Power of Attorney with the USPTO for the above-referenced patent application. In this Revocation and Power of Attorney, the USPTO was directed to send all correspondence regarding this patent

application to Banner & Witcoff, Ltd., 1001 G Street, N.W., Eleventh Floor, Washington, DC 20001. A copy of the filed Revocation and Power of Attorney and a stamped postcard showing the receipt thereof by the USPTO on October 10, 2001 are attached hereto as Exhibit 1.

2. An Office Action was apparently issued by the USPTO in the above-identified patent application during May 2003. This Office Action was not mailed to Banner & Witcoff at the above-mentioned correspondence address. Rather, it was mailed by the USPTO to the inventor.

3. In December 2003, the undersigned was contacted by Examiner Lewis to determine if a Response had been filed by the undersigned to the May 2003 Office Action issued by the USPTO.

4. Upon being contacted by the Examiner, the undersigned thoroughly searched the file jacket and docket records of Banner & Witcoff and found no indication that an Office Action had ever been received by Banner & Witcoff.

5. After concluding the above-mentioned search of the file and docket records of Banner & Witcoff, the undersigned called Examiner Lewis to advise her that the Office Action in question had never been received by Banner & Witcoff. Examiner Lewis determined that the Office Action in question was mailed directly to the inventor and not to the undersigned attorney. It was also determined that the Revocation and Power of Attorney filed on October 10, 2001 had been received by the USPTO, but not fully entered by the USPTO.

6. The inventor did not notify any attorney of Banner & Witcoff or the Assignee of the receipt of the Office Action. Therefore, the undersigned had no knowledge of the fact that the May 2003 Office Action had been issued by the U.S. Patent and Trademark Office and that a response was due. The first knowledge of the Office Action by any attorney of Banner & Witcoff or the Assignee was when the undersigned was informed of the same by Examiner Lewis.

7. Despite being advised of the proper correspondence address for the subject application and the facts set forth above, the USPTO erroneously mailed a Notice of Abandonment in the subject application to the inventor in contradiction of 37 C.F.R. §1.33. No attorney of Banner & Witcoff or the Assignee was informed of the mailing of the Notice of Abandonment.

8. On May 6, 2004, the undersigned contacted Examiner Lewis and left a message on her voicemail asking about the status of the subject application and when a copy of the originally issued Office Action could be expected by the undersigned.

9. On May 7, 2004, the undersigned was first informed of the mailing of the Notice of Abandonment by Examiner Lewis. This was the first date that an attorney of Banner & Witcoff or the Assignee learned of the mailing of a Notice of Abandonment.

10. On May 7, 2004, Examiner Lewis informed the undersigned that filing the subject Petition To Withdraw An Erroneous Notice of Abandonment was necessary.


Pursuant to 37 C.F.R. §1.33, the USPTO is to direct all notices, official letters and other communications relating to an application to the correspondence address filed in the application. As set forth in the facts above, a correspondence address for Banner & Witcoff was filed with the USPTO before the issuance of the Office Action that resulted in the erroneous issuance of a Notice of Abandonment in the subject application. Therefore, the mailing of the Office Action to the inventor was an error on the part of the USPTO. Similarly, the mailing of the Notice of Abandonment to the inventor was an error on the part of the USPTO.

The erroneous holding of abandonment should be immediately withdrawn for at least the following reasons: (1) the USPTO erred by mailing the Office Action in the subject application to the wrong correspondence address; (2) the USPTO should have remailed the Office Action and restarted the period for response because the Examiner learned of the mailing error of the Office Action before the Notice of Abandonment was issued; and (3) the Notice of Abandonment was mailed to the wrong correspondence address after the Examiner was made aware of the correct correspondence address for the application.

In view of the above stated facts, the Commissioner is hereby requested to withdraw the holding of abandonment based on a failure to receive the Office Action, and that a new Office Action be issued resetting the time period for responding thereto.

Respectfully submitted,

Date: 5/12/04


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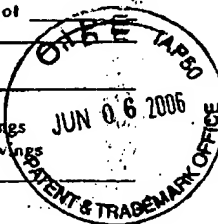
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Applicant: MARK Schroeder / ASD Corporation

Title/Mark: Assembly for Dispensing Packaged Adhesive-Sided

THE MAIL ROOM STAMP BELOW ACKNOWLEDGES RECEIPT OF THE FOLLOWING DOCUMENTS ON THE DATE INDICATED ON THE MAIL ROOM STAMP.

- ☐ Appl'n for Patent with:
- ☐ pg of specification
 - ☐ pg of Claims
 - ☐ pg of Drawings Informal/Formal
- ☐ Inventor's Declaration
- ☐ Small Entity Status Declaration of Inventor
- ☐ Small Entity Status of Declaration of
- ☐ Disclosure Statement
- ☐ Amendment
- ☐ Letter to Draftsman
- ☐ pg of Informal Drawings
 - ☐ pg Formal/Inked Drawings
- ☐ Base Issue Fee Forms
- ☒ Power of Attorney
- ☐ Assignment
- ☐ Check No: _____ \$ _____
- ☒ Certificate of mailing date of 06-06-06
- ☐ Appl'n for TM/SM with drawing and specimens of mark
- ☐ Appl'n for Copyright Registration and deposits.
- ☐ Request for _____ Extension of time
- ☒ Status Inquiry
- ☐ Petition to Revive
- ☒ Copy of Petition to
- ☐ Withdraw Erroneous
- ☐ Notice of Abandonment
- ☒ Copy of Status Letter



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